PUBLIC LAW BOARD NO. 1844

AWARD NO. 3

CASE NO. 14

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The thirty (30) day suspension of Section Foreman P. Folsom and permanent disqualification as a foreman and assistant foreman was improper, without just and sufficient cause and on the basis of unproven charges (System File D-11-1-318).

2. Claimant Folsom be paid for all time lost and that his seniority as foreman and assistant foreman be restored.

OPINION OF BOARD:

At the time this incident arose Claimant was a regularly assigned Section Foreman at Peoria, Illinois, with seniority dating from July 14, 1972. In the performance of his duties Claimant often operated a high rail vehicle owned by the Company. The record shows Claimant picks up the high rail truck in the morning when he reports to work and turns it in when he leaves Carrier's property in the evening. He is not authorized to take the vehicle home or to use it for personal reasons.

By letter dated September 22, 1975, Claimant received notice to attend a formal investigation, which read in pertinent part as follows:

"CHARGE: Misuse of company vehicle and under the influence of alcohol while driving company vehicle on Thursday, September 18, 1975 in the vicinity of South Pekin at approximately 7:30 p.m.

"You may be accompanied by one or more persons and/or representative of your own choosing subject to the provisions of applicable scheduled rules and agreements and you may, if you so desire, produce witnesses in your own behalf without expense to the Transportation Company.

s/ D. L. Boger
Asst. Div. Mgr. - Engineering"

Subsequent to this hearing Claimant was found culpable as charged and assessed discipline of thirty days' actual suspension together with permanent disqualification as foreman and assistant foreman. Thereafter the instant claim was filed protesting the assessment of discipline, and failing resolution on the property the matter comes to this Board for final disposition.

The record establishes that on September 18, 1975, at 6:30 p.m., some three hours after Claimant completed his assignment for the day, his high rail truck was observed parked off company property in South Pekin, Illinois, by his supervisor, Roadmaster G. J. Kelly. Upon sighting the vehicle Kelly telephoned Claimant's home and was advised by the latter's wife that Claimant was out fixing a broken rail near Peoria. The Roadmaster left a message with Claimant's wife to have Mr. Folsom call him when he returned. Kelly thereupon contacted the dispatcher and determined that there was no broken rail near Peoria, nor were there any problems requiring Claimant's services at South Pekin. Finally, at about 7:30 p.m. Kelly telephoned the tavern outside of which the high rail was parked and asked for Mr. Folsom. He was advised that Claimant was not there, but almost immediately after this telephone call the high rail vehicle departed that location.

Kelly received no return call from Claimant and at approximately 9 p.m. he went, together with another employee, to Claimant's home. The high rail vehicle was parked at Claimant's residence and Kelly instructed the other employee to drive the vehicle back to company property. Kelly thereupon discussed the incident with

Claimant, who told him that he was using the company vehicle between 6:30 and 7:30 p.m. to change out a rail near South Pekin. Kelly rejected this story and told Claimant he had seen the vehicle parked outside a tavern during the time period in question. Thereupon Claimant told the Roadmaster that he had stopped in the tavern but only consumed a beer or two. He stated further that he took the company vehicle home because his own personal car had been broken down. Finally he conceded that he did not have permission or authorization to use the company vehicle for personal business.

At the formal investigation on the property, Claimant did not deny telling the Roadmaster he had used the vehicle for personal business and that he had consumed a beer or two in the process. But he testified during the investigation that he was only joking and did not in fact go into the tavern at all on September 18, 1975. In this connection the transcript of investigation contains Claimant's explanation of his conversation with Kelly in the following words:

> "Then I was going to call the office and his truck was out in front. So, I went out there and he started jumping me about being in the tavern. And drinking with the company vehicle. So, I just throwed that in that I just had one beer, I was just going to joke along with him. But, I seen then that he was meaning business but I couldn't change it then so I just let it go at that. But, I don't drink no liquor at all and the only time that I drink is when we went to the union meeting down at Beold."

At the investigation Claimant further explained his presence near the tavern by stating he stopped to gas up the company vehicle at a filling station next door to the tavern. He further testified that the reason he took the company vehicle home was to do repair work on it since he had discovered a loose part while filling the gas tank and decided to take the vehicle home where he had access to tools belonging to his son.

Review of the foregoing record indicates that some fundamental credibility resolutions lie at the heart of this claim for removal of the discipline. It is apparent that the hearing officer and Carrier did not find Claimant's disavowal of his earlier admissions or his belated explanations persuasive. Upon careful consideration of the entire record, we can find no basis for substituting our judgment for that of the Carrier on these factual determinations. Nor can we find that the quantum of discipline imposed is arbitrary, unreasonable or capricious in all the circumstances of this case. Accordingly, we shall not disturb the discipline imposed by Carrier on this Claimant. The claim must be and is denied.

FINDINGS:

Public Law Board No. 1844, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;

2. that the Board has jurisdiction over the dispute involved herein; and

3. that the Agreement was not violated.

AWARD

The claim is denied.

Dana E. Eischen, Chairman

O. M. Perge, Employee Member

R. W. Schmiege, Carrier Member

Dated May 5, 1977